

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2722-2019 (O&M)

Date of decision: 12.07.2022

Islam and others

....Appellants

Versus

Sunder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kul Bhushan Sharma, Advocate for appellant no.1

Mr. Satish Chaudhary, Advocate for appellant no.2 to 8

Mr. Amit Jain, Sr. Advocate with

Mr. Varun Parkash, Advocate for respondent no. 1 to 3

ANIL KSHETARPAL, J (Oral)

The Regular Second Appeal in the State of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

While assailing the correctness of the judgment and decree passed by the learned First Appellate Court, the plaintiffs have filed this Regular Second Appeal. In the Court's considered opinion, the following questions arise for consideration:-

i) Whether the suit filed for grant of decree of declaration, claiming to be owner in possession, can be held to be time barred, without examining the cause of action, as arising from the facts and

circumstances described in the plaint?

ii) Whether the purchaser of the property, can be said to be a bonafide purchaser, when the property is sold by an attorney, who had no authority to sell the property?

iii) Whether the transfer of immovable property by the alleged power of attorney holder, who had no authority and the ratification of the sale deed, can be assumed merely because in the partition proceedings of the joint land, this issue was never taken up? In other words, if a person without any authority executes the sale deed on behalf of another, whether such sale would stand regularized merely because such land has been partitioned?

Some facts are required to be noticed.

The plaintiffs filed a suit claiming to be co-sharers in possession of 8 kanals of land, out of total land measuring 49 kanals and 19 marlas. They claim that their father late Sh. Fiddi s/o Sh.Bhure Lal was co-owner in a large Khewat. Sh. Fiddi alongwith Sh.Zamil, Sh.Sadiq and Sh.Rehman Ramzan executed a general power of attorney in favour of Sh.Attar Singh on 04.10.1989 authorizing him to sell land measuring 35 kanals and 16 marlas. In the power of attorney, it was specified that Sh.Fiddi is authorizing Sh.Attar Singh to sell the property to the extent of 160/3787th share out of the joint land. The total joint land was described as 189 kanals and 7 marlas. The share of late Sh. Fiddi came to be 8 kanals out of 35 kanals and 16 marlas. Sh. Attar Singh, on the basis of the aforesaid power of attorney, sold land to Sh.Ram Parshad vide registered sale deed dated 12.10.1989 which includes 8

kanals land belonging to the share of late Sh. Fiddi. Subsequently, Sh. Attar Singh executed yet another sale deed in favour of Sh.Pradeep on 18th May, 1990, selling another parcel of land including 8 kanals from the share of Late Shri Fiddi. The plaintiffs, as already noticed, filed a suit claiming that they are owners in possession and they came to know about the sale deed in the month of November, 2006. In the meantime, Sh.Pradeep further sold the property in favour of defendant No. 3 to 5 vide sale deed dated 23rd January, 2006.

The trial court, on appreciation of evidence, partly decreed the suit by declaring that the subsequent sale deed executed Sh. Attar Singh in favour of Sh.Pradeep does not bind the rights of the plaintiffs. However, the First Appellate Court while reversing the judgment and decree passed by trial court has, in substance, given the following reasons:-

- a) the suit filed by the plaintiffs is barred by time.
- b) Defendant No. 3 to 5 are bonafide purchasers for valuable consideration.
- c) There is an implied ratification of the unauthorized sale deed executed by Attar Singh on behalf of Late Sh.Fiddi.

Heard learned counsel representing the parties at length and with their able assistance, perused the paper book and the records of the courts below, which were requisitioned. There is no dispute between the parties that late Sh.Fiddi, while executing the general power of attorney, on 4th October, 1989, only authorized Sh.Attar Singh to sell his land to the extent of 8 kanals. The defendants are claiming that late Shri Fiddi

ratified the action of Sh. Attar Singh with respect to the sale of land beyond the extent specified in the general power of attorney on the ground that Sh. Pardeep and late Sh. Fiddi were parties to the partition proceedings, which were instituted on 21st August, 1991 and culminated on 6th February, 1997. The defendants have placed on file various orders including the deed of partition prepared by the revenue authorities by allotting land measuring 49 kanals and 19 marlas to Sh. Pradeep.

Learned senior counsel representing the defendants while drawing the attention of the Court to Section 196 to 199 of the Indian Contract Act, 1872, submits that late Sh. Fiddi, during his lifetime, never objected to the correctness of the sale deed in the partition proceedings, therefore, he is deemed to have impliedly ratified the action of the Sh. Attar Singh. Section 196 to 199 are extracted as under:-

“196. Right of person as to acts done for him without his authority. Effect of ratification.—Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or implied.—Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

198. Knowledge requisite for valid ratification. —No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

199. Effect of ratifying unauthorized act forming

part of a transaction. —A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.”

In the considered opinion of the Court, the ratification can be inferred either if it is expressed or implied. However, it has to be specific. The inference of the ratification cannot be drawn merely because an illiterate person has failed to assert his rights with regard to his share in the partition proceedings. There is no record that Sh.Pradeep while defending the partition proceedings, confronted late Sh. Fiddi with regard to the aforesaid sale deed executed by Shri Attar Singh and late Sh. Fiddi acknowledged its correctness. It is evident that late Sh. Fiddi was completely illiterate. He has thumb marked the general power of attorney executed on 4th October, 1989. An illiterate person, residing in a village cannot be expected to be vigilant about the extent of his share in a large Khewat. Furthermore, the plaintiffs have claimed that they continued to be in possession of the land in accordance with their share and the defendants have tried to interfere in their possession, for the first time, in November, 2006.

With regard to the second reason, learned counsel representing the respondents has contended that mutation of the sale deed dated 18th May, 1990 was sanctioned in favour of Sh.Pradeep on 16th January, 1991. He submits that defendant No. 3 to 5 purchased the property from Sh.Pradeep after due diligence and verification of the revenue record. The expression bonafide purchaser is used with reference to Section 41 of the Transfer of Property Act, 1882, which

provides for consequence of sale by an ostensible owner. One of the essentials to validate the sale by an ostensible owner is the expressed or implied representation by the actual owner that the ostensible owner is, in fact, the owner. This matter has been explained by the Supreme Court in **Hardev Singh vs. Gurmail Singh (dead) through Lrs (2007) 2 SCC 404** wherein it has been laid down that there must be express or implied representation by the actual owner to the effect that the ostensible owner is the real owner of the property. In the present case, the aforesaid requirement is not fulfilled.

The last reason assigned by the court is with regard to the bar of limitation. As already noticed, the plaintiffs have claimed that the cause of action to file the suit arose in November, 2006, when their possession was sought to be disturbed. It is evident that the First Appellate Court has decided the question of limitation without reference to the date of accrual of the cause of action. As per the provisions of the Limitation Act, 1963, the period of limitation would begin to run from the date of accrual of the cause of action. Therefore, the limitation period cannot be calculated without reference to the actual date of cause of action. Sh.Islam, one of the plaintiffs, while appearing as witness has reiterated the aforesaid assertion with regard to the accrual of cause of action. In the absence of any material to prove that the aforesaid assertion is incorrect, the suit cannot be held to be barred by time.

Consequently, the judgment and decree passed by the First Appellate Court is set aside. The sale deed dated 18.05.1990 executed by Sh.Attar Singh to the extent of land measuring 8 kanals, which

represents the share of late Shri Fiddi, shall not be binding on the rights of the plaintiffs. In other words, the plaintiffs are declared owners in possession of the suit land measuring 8 kanals.

The Regular Second Appeal stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

12.07.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE